

Item SPR05-36 Response Form

Title: Judicial Administration Rules: Duties of All Judges (amend Cal. Rules of Court, rule 6.608)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2005

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action..*

Invitation to Comment (SPR05-36)

Title	Judicial Administration Rules: Duties of All Judges (amend Cal. Rules of Court, rule 6.608)
Summary	This proposed amendment would clarify that when a judge determines that he or she is disqualified from hearing a matter, the presiding or master calendar judge need not concur. Concurrence is required only if the judge refuses to hear a case for a reason other than disqualification.
Source	Office of the General Counsel
Staff	Kenneth L. Kann, Managing Attorney, 415-865-7661, kenneth.kann@jud.ca.gov Mark Jacobson, Attorney, 415-865-7898, mark.jacobson@jud.ca.gov
Discussion	<p>California Rule of Court 6.608(1) states: “Each judge shall: (1) Hear all assigned matters unless he or she is disqualified or has stated in writing the reasons for refusing to hear a cause assigned for trial, and the presiding judge or master calendar judge has concurred.” Some judges have interpreted this rule to mean that a judge who determines that he or she is disqualified must obtain the concurrence of the presiding or master calendar judge. Others believe the rule does not require concurrence in a judge’s disqualification decision.</p> <p>The rule as written is not clear. On its face, the phrase following the comma—“and the presiding judge or master calendar judge has concurred”—could be interpreted to apply to both situations preceding the comma, rather than just the latter. In other words, the placement of the phrase and the punctuation could suggest that a judge must obtain the concurrence of the presiding or master calendar judge in both instances, i.e., when a judge has determined that he or she is disqualified and when a judge refuses to hear a case for other reasons.</p> <p>The history of the rule indicates that concurrence of the presiding or master calendar judge is not required for disqualification. The 1973 version of this rule (rule 244.5, effective January 1, 1973) provided that the presiding judge shall “require a judge who refuses a cause assigned to him for trial or for hearing, when he is not disqualified, to state his reasons in writing unless the presiding judge or the master calendar judge has concurred in such reasons.” There is no other reference in the former rule to disqualification. The successor to rule 244.5 was rule 206, which is the predecessor to rule 6.608. Rule 206, which became effective on January 1, 1985, stated: “Each judge shall (1) hear all assigned matters unless disqualified; (2) state in writing the reasons for refusing to hear a cause assigned for trial for which the judge is not disqualified, unless the presiding judge or the master calendar judge has concurred in the reasons.”</p>

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The current rule—rule 6.608—was adopted effective January 1, 2001. There is no indication in the history of the current rule as to why the two subsections from former rule 206 were combined into one subsection. However, the report to the Judicial Council proposing the language of rule 6.608 recommended that the provisions of rule 206 be incorporated into proposed rule 6.608 “with minor alterations.” This language indicates that the new rule was not intended to change the meaning of rule 206. Thus, it is apparent from a review of the former rules that the phrase addressing concurrence by the presiding or master calendar judge was intended to apply only to the situation in which a judge is not disqualified but nevertheless refuses to hear the assigned matter.

This interpretation is supported by the fact that the statutory scheme governing disqualification does not authorize a presiding judge to review a judge’s disqualification decision. Code of Civil Procedure section 170.3(a)(1) merely states that “[w]henever a judge determines himself or herself to be disqualified, the judge shall notify the presiding judge of the court of his or her recusal and shall not further participate in the proceeding . . .” Section 170.3(a)(1) does not condition a judge’s disqualification on concurrence of the presiding judge or master calendar judge.

There is some concern that this interpretation might deprive a presiding judge of the authority to manage a situation in which a judge repeatedly and unjustifiably disqualifies himself or herself, thereby impacting the effective operation of the court. However, rule 6.608 was not intended to address that situation. A presiding judge does have a remedy under rule 6.603(c)(4), which provides that a presiding judge must notify the Commission on Judicial Performance when a judge has substantially failed to perform judicial duties, including “persistent refusal to carry out assignments as assigned by the presiding judge.”

Based on the history of the rule and a review of the law concerning this issue, judges who determine they are disqualified are not required to seek or obtain the concurrence of the presiding or master calendar judge before they are recused. However, judges who are not disqualified but nevertheless refuse to hear an assigned matter must state in writing the reasons for the refusal, and the presiding judge or master calendar judge must concur. The proposed amendment would clarify this meaning of the rule.

The text of the new rule is attached at page 3.

Attachment

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Rule 6.608 of the California Rules of Court would be amended effective January 1, 2006, to read:

1 **Rule 6.608. Duties of all judges**

2
3 Each judge ~~shall~~ must:

- 4
- 5 (1) Hear all assigned matters unless: (a) he or she is disqualified; or (b) he or she
- 6 has stated in writing the reasons for refusing to hear a cause assigned for trial,
- 7 and the presiding judge or master calendar judge has concurred;
- 8
- 9 (2) Immediately notify the master calendar judge or the presiding judge upon the
- 10 completion or continuation of a trial or any other matter assigned for hearing;
- 11
- 12 (3) Request approval of the presiding judge for any intended absence of one-half
- 13 day or more, within a reasonable time before the intended absence;
- 14
- 15 (4) Follow the court's personnel plan in dealing with employees; and
- 16
- 17 (5) Follow directives of the presiding judge in matters of court management and
- 18 administration, as authorized by the rules of court and the local rules and
- 19 internal policies of the court.